

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARCUS HOWERTON,

Case No.: 2:22-cv-00280-APG-VCF

Plaintiff

Order Granting Motions to Dismiss and for Leave to File Supplement

V.

CLARK COUNTY DETENTION CENTER,
et al.,

Defendants

[ECF Nos. 21, 22]

Defendant Joseph Lombardo moves to dismiss this case with prejudice for failure to
serve. He also moves for leave to file a supplement to the motion to dismiss. Howerton has
responded to either motion.

I grant the motions because the factors I consider when deciding whether to dismiss a case for failure to prosecute weigh in favor of dismissal with prejudice. *See Pagtalunan v. U.S.*, 291 F.3d 639, 642 (9th Cir. 2002). Although this case has not been pending for an unordinarily lengthy period of time, discovery was extended once because Howerton was not cooperating and Lombardo could not locate him. *See* ECF Nos. 19, 20. Thus, the “public’s interest in expeditious resolution of litigation” and the “court’s need to manage its docket” weigh in favor of dismissal. *Pagtalunan*, 291 F.3d at 642. Additionally, Lombardo has been thwarted in his efforts at discovery and therefore is prejudiced. *Id.* There are no less drastic alternatives available despite Howerton recently communicating with Lombardo, he still has not responded to the pending motions or otherwise taken any action to prosecute this action. *Id.*; ECF No. 22 at 2-3. Finally, although the public policy favoring disposition of cases on their merits weighs

1 against dismissal, all the other factors weigh in favor. *Pagtalunan*, 291 F.3d at 642. I therefore
2 grant Lombardo's motions and dismiss this case with prejudice for failure to prosecute.

3 I THEREFORE ORDER that defendant Joseph Lombardo's motions to dismiss and to
4 supplement (**ECF Nos. 21, 22**) are GRANTED. The clerk of court is instructed to enter
5 judgment in favor of the defendants and against the plaintiff, and to close this case.

6 DATED this 9th day of August, 2023.



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8 ANDREW P. GORDON
9 UNITED STATES DISTRICT JUDGE
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